

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

ST. LOUIS COUNTY FIRE FIGHTERS)
ASSOCIATION, LOCAL 398, INTERNATIONAL)
ASSOCIATION OF FIRE FIGHTERS,)

Petitioner,)

vs.)

CHESTERFIELD FIRE PROTECTION)
DISTRICT, et al.,)

Respondent.)

Public Case No. 76-022

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

FINDINGS OF FACT

This case appears before the State Board of Mediation upon St. Louis County Fire Fighters Association, Local 398, International Association of Fire Fighters, (hereinafter referred to as "Petitioner"), filing a Petition for the determination of an appropriate bargaining unit and majority representative status for all Fire Department employees of the Chesterfield Fire Protection District, Chesterfield, Missouri, (hereinafter referred to as "District"), inclusive of the ranks of Fire Fighter, ambulance personnel, Lieutenant, Captain, Fire Marshall, Deputy Chief, all of which constitute approximately forty-three (43) employees.

The State Board of Mediation has jurisdiction to hear and decide this matter pursuant to Section 105.525 RSMo. 1969, which provides in pertinent part:

"Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation."

A hearing in this case was conducted by a quorum of the Board at the St. Louis County Government Center in Clayton, at which time the following evidence was adduced.

The Fire Department within the District currently includes the following positions: one Fire Chief, three Deputy Fire Chiefs, one Fire Marshall, eight Captains, four Lieutenants, approximately twenty-two Fire Fighters, and six ambulance personnel. The District consists four fire houses. The Chief, Deputy Chiefs, Lieutenants, and all ambulance personnel are stationed at Fire House No. 1 which also serves as the administration building for the District. Fire House Nos. 2, 3, and 4 are, in effect, "satellite" fire houses, the locations of which are illustrated graphically by Exhibit B, attached hereto and made a part hereof by reference.

A Captain and two Fire Fighters (also referred to as Privates) are responsible for the operation of each of the three "satellite" fire houses. Since there are three different shifts, three Captains are assigned to each of the three "satellite" fire houses. The shifts are arranged so that each member is working one day for twenty-four hours and then off two days.

The Petitioner seeks to represent any and all units which this Board may find appropriate. The District has objected to the inclusion in an appropriate unit the positions of Fire Chief, Deputy Fire Chief, Fire Marshall, Captain, and Lieutenant for the reason that these individuals are supervisory and therefore do not share a clear and identifiable community of interest with the other employees within the Department. The District further contends that ambulance personnel should be excluded from an appropriate unit for the reason that their duties and responsibilities vary so greatly from the other employees so as not to amount to a significant community of interest.

The parties have stipulated that the position of Fire Chief be excluded from an appropriate bargaining unit. Further, the parties have agreed that the position of Fire Fighter be included in an appropriate unit. We will not, therefore, address ourselves to those positions. A description of each of the positions in dispute is set forth in separate paragraphs in this opinion.

Deputy Chief

The Deputy Chief is second in command and in the absence of the Chief, he assumes control of the Department and performs the duties and exercises the power incidental to the Office of Chief. He is also responsible for the application of policy, Rules and Regulations, practices and procedures of the Department. In addition, he responds to alarms and special calls, and commands and directs operations unless relieved by the Chief. He keeps such records as are necessary to insure efficient operation of his command and is generally responsible for the proper management, and the efficient functioning of the Department, including the authority to take necessary action to correct any deficiencies in his command. He works a twenty-four hour shift, with forty-eight hours off and while on duty he resides with the other men at Fire House No. 1.

Fire Marshall

The Fire Marshall is the main fire prevention control officer of the District. He regulates the accessibility of all future expansions and developments within the District. He enforces building regulations in accordance with Building Officials and Code Administrators-National Fire Protection Association (BOCA-NFPA) and District Ordinances. He prepares and presents all fire ordinances to the Board of Directors of the District. In addition, he has the responsibility for the training of personnel in nursing homes and hospitals so they can effectively deal with a fire. He works a regular five-day, forty-hour week. He is on a straight salary and receives no overtime pay for extra

hours that he works. He does not reside with the men while on duty, but works in an independent capacity.

Captain

The Captain is a member of the Deputy Chief's staff and commands a company or other minor subdivision of the Department, which in this instance would comprise two Fire Fighters. He is responsible for seeing that all equipment assigned to his command is properly cleaned, maintained and protected. In addition, he is responsible for training and instructing the members of his command. He is authorized to suspend members of his command and to recommend their dismissal. Further, he shall enforce all departmental policy. He resides with the fire fighters and works the same hours.

Lieutenant

Lieutenants are next in command from the rank of Captain, and have the same authority and duties as a Captain, and are subject to the same rules, regulations and privileges as a Captain.

Ambulance Personnel

The ambulance personnel, consisting of five paramedics and one emergency medical technician, are primarily responsible for providing ambulance and emergency paramedic service in the District. The District now owns two ambulances which are stationed at Fire House NO. 1 and are designed and equipped solely for the purpose of providing ambulance service within the District. The ambulance personnel are trained in the use and maintenance of the ambulances and related equipment, such as an EKG telemetry and a defibrillator. The training in these areas is not received by the other employees within the District. In addition, the ambulance personnel are trained as fire fighters and hold the rank of Private. They work the same shift or hours as the other employees. They reside in the same house and perform household duties along with

the other fire fighters. The salary grading for a paramedic is identical to that of the Lieutenant.

CONCLUSIONS OF LAW

Section 105.525 RSMo. 1969 states:

"Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation. ."

Appropriate unit is defined in Section 105.500 (1) RSMo. 1969 as:

". . . a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

It is the position of this Board that supervisors cannot be included in the same bargaining unit as the employees whom they supervise, because of a lack of community of interest. Therefore, it is necessary to make a determination as to the positions which possess supervisory qualities. In the case of Western Missouri Public Employees, Local 1812 and Missouri State Council 72, AFSCME, v. Jackson County, Missouri, (Department of Corrections), Public Case No. 90, and St. Louis Fire Fighters Association, Local 73, IAFF, AFL-CIO v. City of St. Louis, Missouri, Public Case No. 76-013, this Board set forth the factors which are considered in determining whether an employee is a supervisor. They are as follows:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees.

Deputy Chief

In reference to the position of Deputy Chief, it is not necessary to reiterate the responsibilities of this classification in determining whether it can be considered supervisory; the competent and substantial evidence upon the whole record clearly indicates that all of the aforementioned factors are applicable to the position of Deputy Chief. It is therefore the opinion of this Board that the position of Deputy Chief is supervisory and consequently should be excluded from an appropriate bargaining unit.

Fire Marshall

The position of Fire Marshall is unique within the structure of the Fire Department. This individual works a regular five-day, forty-hour week as opposed to the other firemen who work a twenty-four hour shift with forty-eight hours off. While on duty he does not reside with, nor does he perform similar duties to those of the other firemen. The Fire Marshall operates completely independent of all other firemen. It is therefore the opinion of this Board that the position of Fire Marshall does not share a clear and identifiable community of interest with the other personnel within the District and should be excluded from an appropriate unit.

Captain

The position of Captain, in this instance, is most difficult to categorize. The evidence indicates that individuals who serve in the capacity of a Captain have authority to suspend subordinates from duty when necessity dictates. The evidence further shows that reports prepared by the Captain concerning the performance of a fire fighter, are considered by the Fire Chief in evaluating an individual's likelihood for promotion, transfer, or dismissal. In addition, the Captain is responsible for the enforcement of all

departmental policy. These practices argue strongly in favor of the exclusion of the Captain from an appropriate unit.

On the other hand, the Captain, although he has the authority to direct the work force, is also responsible for the activities of two Fire Fighters. During a twenty-four hour period, these three men occupy a fire house in which they work, eat and sleep. When an alarm sounds, they perform their fire fighting duties as a unit. The evidence persuades this Board to believe that a Captain functions as a working foreman rather than a distinct supervisor. Upon careful consideration of all factors, which would include the geographical positions of the fire houses within the District, it is the opinion of this Board the Captain has a clear and identifiable community of interest with the position of Fire Fighter and should be included in an appropriate unit.

Lieutenant

The position of Lieutenant is next in command from the Captain and has the same authority and duties as a Captain and is subject to the same rules, regulations and privileges as a Captain. Therefore, the reasoning which was applicable to the position of Captain would also pertain to Lieutenants and they would be included in an appropriate unit.

Ambulance Personnel

The ambulance personnel, consisting of five paramedics and one emergency medical technician, are primarily responsible for providing ambulance and emergency paramedic service in the District. They undergo training and schooling which is not received by other firemen. These individuals are also trained as fire fighters, but only become actively involved in fire fighting in emergency situations. They respond to fire alarms for the purpose of offering medical assistance. The medical personnel are located at Fire House No. 1 where they work at a twenty-four hour shift with forty-eight

hours off as do the other fire fighters. They perform the same household duties and the rate of compensation is equal to that of a Lieutenant. The evidence clearly indicates that a majority of the paramedic's time is spent with the other fire fighters. Notwithstanding their special training, it is the opinion of this Board that ambulance personnel share a clear and identifiable community of interest with the other fire fighters and should be included in an appropriate unit.

DECISION

It is the decision of this Board that the following unit in the Chesterfield Fire Protection District is appropriate:

All employees of the Chesterfield Fire Protection District including the positions of Fire Fighter (Private), Lieutenant, Captain, and ambulance personnel, but excluding Fire Marshall, Deputy Fire Chief, and Fire Chief.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than forty-five (45) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by St. Louis County Fire Fighters Association, Local 398, International Association of Fire Fighters.

It is hereby ordered that the District shall submit to the Chairman of the State Board of Mediation, as well as to the petitioner, within seven (7) days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Dated this 28th day of February, 1977.

STATE BOARD OF MEDIATION

/s/ Michael Horn
Michael Horn, Chairman

/s/ Stanley W. Cox
Stanley W. Cox, Employer Member

/s/ Robert Missey
Robert Missey, Labor Member